

MARCH 16, 2021

HOUSING OPTIONS
LEGISLATIVE SUMMARY
CLARK COUNTY, WA





INTRODUCTION

During the 2019 and 2020 Washington State legislative session, enacted legislation revolved around tools for both renters/homeowners and local governments to help themselves. For example, in regards to renters, tools such as renter protections in the form of increased notification of rental increases ([HB 1440](#)) allows renters additional time to financially prepare or move due to rising rents. New tools given to cities included Real Estate Excise Taxes ([HB 1219](#)) and sales taxes ([HB 1406](#)), which allow jurisdictions to gather funds and implement their own, self-directed, affordable housing strategies. Very little direct action for local governments was mandated by the State to address planning for or providing housing, and when it was, counties were largely exempt. Legislation directed at cities focused on multifamily and middle housing, including [SB 6617](#), mandating that Growth Management Act (GMA) cities may not require off street parking for Accessory Dwelling Units (ADUs) located within a quarter-mile of a major transit stop with some exceptions. This and similar examples are detailed in Table 2, under the section “Passed Legislation for Inspiration,” to give the County an idea of potential strategies to borrow even though they do not result in mandates for the County.

What is middle housing?

Middle housing includes accessory dwelling units (ADUs), duplexes, triplexes, quadplexes, townhouses, cottage clusters, and courtyard apartments. Middle housing provides alternatives to single-family detached dwelling and multi-unit apartment buildings that are in the “middle” in terms of density, scale, and size of units.

Much attention focused on whether Washington would pass a mandatory middle housing bill requiring cities to permit middle housing similar to Oregon's HB 2001. Washington's initial effort, [HB 1923](#), underwent several revisions in 2019 before ultimately being adopted with incentives, rather than requirements, for housing planning. Initial drafts included a mandate for cities to adopt several housing planning actions, but was ultimately changed to provide grant funding as an incentive for cities to complete those actions including:

- Upzoning areas with access to transit;
- Permitting duplexes, triplexes, courtyard apartments and/or ADUs in single-family zoned areas;
- Adopting a form-based code;
- Allowing subdivisions of smaller lots;
- Adopting a subarea plan;
- Implementing a SEPA planned action or adopting SEPA categorical exemptions for urban infill development; and
- Implementing a housing action plan to encourage construction of a wider variety of housing types at a range of price points.

While none of these actions are mandatory for the County—or in fact, for any cities—they provide a range of strategies for the County to explore. Similarly, the County may wish to emulate the new requirement for cities that they permit supportive housing where multifamily housing is permitted. The only mandatory action for counties resulting from [HB 1923](#) is a requirement to reduce minimum residential parking requirements for affordable and senior housing projects located near transit. Another feature of [HB 1923](#) is protection from SEPA appeals for certain housing planning actions, however, this protection is limited to cities and cannot be employed by the County except in regards to transportation impacts

Of the bills that included counties, [HB 1377](#) and [HB 2343](#) (which expands exemptions and builds upon [HB 1923](#) passed the year prior) are of special note. [HB 1377](#) requires certain counties and cities to allow an increased density bonus for certain affordable housing development on property owned or controlled by a religious organization, and [HB 2343](#) sets regulations for cities and counties planning under RCW 36.70A.040 regarding minimum residential parking requirements for low-income, senior, disabled, and market-rate housing units located near high-quality transit service. Given the current housing crisis, [HB 1754](#) may also prove valuable, as it provides a framework for local governments to regulate housing for people experiencing homelessness in facilities such as safe parking areas, outdoor

encampments, indoor overnight shelters, and temporary small houses on property owned or controlled by a religious organization.

While counties did not face the same number of directives as cities during 2019 and 2020, the variety of enacted legislation speaks to the gravity of the housing affordability situation within the State, as well as the legislature’s willingness to step in when they believe local governments are not providing the necessary housing options for their citizens. Indeed, as is detailed in the section entitled “Looking Forward, 2021 and Beyond”, several bills are currently in hearings which were created to address the exclusion of counties within previous legislative efforts. As an example, proposed [SB 5269](#) provides tax levy incentives for GMA cities and counties if they allow various middle housing options in all areas zoned for single family within UGAs. Another example, [HB 1298](#), mandates the exclusion of accessory dwelling units located outside the UGA from the calculation of housing density in certain circumstances.

The need for affordable and workforce housing has only increased with the pandemic’s impacts on the economy, which will push the legislation towards more mandates and encouragement like [SB 5269](#), applicable to both cities and counties. Given the likelihood of future mandates, Clark County can look towards bills such as [SB 6617](#), and both the pre-amendment and final [HB 1923](#) as possible inspiration for self-initiated changes to encourage more affordable and workforce housing options within its boundaries. The numerous bills regarding fundraising options for affordable housing programs provided by the 2019 and 2020 legislative sessions should also be considered as Clark County moves forward toward obtaining its housing diversity goals.



The following report details a summary of relevant legislation passed by the Washington State Legislature in the 2019 and 2020 sessions, that would apply to Clark County. Each bill, applicable reference/changes to the Revised Code of Washington (RCW), and a summary of the bill are listed in Table 1. Following this summary is the aforementioned Table 2, containing the 2019-2020 legislation which is not applicable to Clark County but can serve as guidance and inspiration for self-initiated changes. The final section of this summary will be a brief look at upcoming House and Senate bills, slated for consideration in 2021.

If further information regarding any of these bills is desired, please refer to Washington State's Legislature website (<https://app.leg.wa.gov/billinfo/>). Here you can search by bill number to obtain bill history, complete text, and bill summaries for quick and easy reference.

Key Takeaways, Action Items, and Opportunities

- Due to public pressure for local control, the 2019-2020 session emphasized encouragement and few mandates for both cities and counties. Likely due to the COVID pandemic and economic recession, upcoming legislation shows an increased willingness to override local control in order to provide more affordable and middle housing options.
 - Examples: Most notably, [HB 1923](#) provides incentives but not mandates for housing actions, similar to proposed [SB 5269](#). This year, however, proposed [HB 1298](#) excludes ADUS located outside of UGAs from the calculation of housing density, and proposed [HB 1232](#) would mandate that counties and cities either address middle housing options directly, or provide information on how the county and its cities as a whole will meet the existing and projected housing needs of all economic segments during the planning period.
- Code changes to eliminate obstacles to middle housing and multifamily development by:
 - Removing owner occupancy requirements
 - Example: [SB 5235](#), proposed, applies to counties and removes owner occupancy requirements for ADUs.
 - Reduce or remove off street parking requirements.
 - Example: [HB 2343](#), passed, applies to counties and sets regulations for cities and counties regarding minimum residential parking requirements for multifamily low-income, senior, disabled, and market-rate housing units located near high-quality transit service.

- Reduce barriers to construction in the form of reducing/eliminating fees and speeding up/simplifying review.
 - Example: Proposed [SB 5024](#) would exempt condominiums with ten or fewer units from the requirement to submit building enclosure design documents.
- While not applicable to counties, the menu of housing planning actions in [HB 1923](#) includes a variety of strategies for the County to consider in order to support middle housing, such as the authorization of duplexes on corner lots, which the County already permits in select single-family zones, and the authorization of cluster zoning or lot size averaging in all zoning districts that permit single-family residences. Lot size averaging is an approach that authorizes subdivisions with some lots smaller than the minimum lot size allowed in the zone, as long as the average of all the lot sizes remains equal to or above the minimum lot size in the zone.
- Passed and proposed legislation focuses on expanding SEPA exemptions for certain developments to encourage infill and densification.
 - Example: Passed [HB 2673](#) clarifies infill development within both cities and counties is exempt from State Environmental Policy Act (SEPA) review if the development is “roughly equal” or of lower density than what is called for in the Comprehensive Plan.
- Key funding opportunities for cities and counties include:
 - [HB 1406](#) authorizes the use of a 0.01 percent sales tax to generate revenue for acquiring, rehabilitating, or constructing affordable housing and renter assistance.
 - [HB 1102](#) allocated \$175 million to the state housing trust fund.
 - [HB 1219](#) authorizing the use of real estate excise taxes to support projects addressing affordable housing and homelessness.
- Upcoming, proposed legislation focuses on amending the GMA to include and encourage both affordable and workforce housing.
 - Example: [HB 1220](#), would require counties and cities to address moderate, low, very low, and extremely low income housing in the housing element of their comprehensive plan.

2019-2020 LEGISLATIVE SESSION

The following bills create new mandates or opportunities that apply directly to Clark County.

Table 1: Applicable 2019-2020 passed legislation

Bill	RCW Reference/Changes	Summary
Fundraising and Tax Exemptions		
HB 1219	Amending RCW 82.46.035 and 82.46.037 and creating a new section	<i>Providing cities and counties authority to use Real Estate Excise Taxes (REET) to support affordable housing and homelessness projects, one at 0.25 percent and the other at 0.5 percent until January 1, 2026. In 2016, City of Seattle analysts estimated that a 0.25 percent REET would annually raise \$15-20 million in Seattle, or about \$1 million in Edmonds, for example.</i>
HB 1102	Making appropriations and authorizing expenditures for capital improvements; amending RCW 28B.15.210, 28B.15.310, 28B.20.725, 28B.30.750, 28B.35.370, 28B.50.360, 28B.77.070, 43.63A.125, 43.83.020, 43.88D.010, and 90.94.090; amending 2018 c 2 ss 1010, 1019, 1013, 1014, 1028, 2019, 3024, 3093, 3109, 3105, 4002, and 5014, 2018 c 298 ss 1004, 1007, 1002, 1013, 1016, 2004, 2005, 2008, 2018, 5040, and 7010, and 2017 3rd sp.s. c 4 ss 1052, 3056, 3136, and 5058 (uncodified); reenacting and amending RCW 43.155.050 and 70.148.020; creating new sections; making appropriations; and	<i>Among other allocations, dedicates \$175 million to the state housing trust fund to help affordable housing developers create subsidizes homes. Since 1986, the trust fund has assisted in the creation of over 47,000 subsidized homes statewide.</i>

	declaring an emergency.	
HB 1406	Adding a new section to chapter RCW 82.14	<i>Authorizes cities and counties to recapture 0.01 percent sales tax from the state's currently assessed sales tax, or enact a local levy for a new 0.01 percent sales tax, to generate revenue for acquiring, rehabilitating, or constructing affordable housing; smaller cities/counties could also put the funds toward renter assistance.</i>
HB 1107	Amending RCW 84.36.049 and 2018 c 103 s 2	<i>Giving qualified cooperative associations involved in the creation of low-income housing similar abilities to be exempt from state and local property taxes as nonprofit entities.</i>
HB 2497	Amends RCW 39.89.020, RCW 39.102.020, RCW 39.104.020	<i>Adds development of permanently affordable housing to the allowable uses of community revitalization financing, the local infrastructure financing tool, and local revitalization financing.</i>
SB 6212	Amends RCW 84.52.105	<i>Expands the use of the affordable housing property tax levy to include owner-occupied home repair, affordable homeownership, and foreclosure prevention programs for households within incomes at or below 80% AMI.</i>
HB 1590	Amends RCW 82.14.530	<i>Authorizes county or city legislative authorities to impose local sales and use tax for housing and related services by councilmanic action instead of a vote.</i>
HB 2229	Amends RCW 82.04.051	<i>Relating to clarifying the scope of taxation on land development or management services in part to remove barriers to the creation of affordable housing.</i>
Encouraging Forms of Affordable/Workforce Housing		
SB 1377	Adding a new section to chapter 35.63 RCW; adding a new section to chapter 35A.63 RCW; adding a new section to chapter 36.70A RCW; and adding a new section to chapter 44.28	<i>Concerning affordable housing development on religious organization property- Requires a city planning under certain planning enabling statutes, or a city or county fully planning under the GMA to allow an increased density bonus for certain affordable housing development on property owned or controlled by a religious organization.</i>

SB 5334	Amends RCW 64.90.410, 64.90.670, 64.90.010, 264.90.025, 64.90.075, 64.90.080, 64.90.090, 64.90.225, 64.90.245, 364.90.285, 64.90.405, 64.90.445, 64.90.485, 64.90.610, 64.90.650, 464.06.005, 6.13.080, 64.55.005, 64.32.260, 64.34.076, 64.34.308, 564.34.380, 64.34.392, 64.38.025, 64.38.065, 64.38.090, and 64.38.095	<i>Fixes to the state's condo defect liability law that has helped cause a condo construction drought by encouraging frivolous lawsuits.</i>
HB 1923	Amends RCW 36.70A	<i>Amends the definitions for Affordable housing, Low-income Household, Very low-income household, Extremely low-income household, and Permanent supportive housing. Section 5 limits the amount of parking that counties and cities planning under RCW 36.70A.040 may mandate for low-income, disabled, senior, and market-rate housing units located near high-quality transit service. Additionally, a project action evaluated under SEPA by a city, county, or town planning fully under the GMA is exempt from appeals under SEPA on the basis of the evaluation of or impacts to transportation elements of the environment,</i>
HB 2673	Amends RCW 43.21C.229	<i>Clarifies exemptions from SEPA made by a city or county planning under RCW 36.70A.040 for infill development must be "roughly equal or" lower than what is called for in the applicable comprehensive plan.</i>
HB 2343	Amends RCW 36.70A.620, and 36.70A.610, reenacting and amending 36.70A.030, and creating a new section	<i>Sets regulations for cities and counties planning under RCW 36.70A.040 regarding minimum residential parking requirements for low-income, senior, disabled, and market-rate housing units located near high-quality transit service. Encourages middle housing creation in cities. (Builds upon HB 1923 passed in 2019)</i>

HB 1754	Amends RCW 36.01.290	<i>Provides a framework for local governments to regulate housing houseless citizens in facilities such as safe parking efforts, outdoor encampments, indoor overnight shelters, and temporary small houses on property owned or controlled by a religious organization.</i>
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The following bills do not apply directly to Clark County but may provide ideas that can be applied to the County or may be expanded to apply to Counties in future legislative sessions.

Table 2: Inspirational 2019-2020 passed legislation

Bill	RCW Reference/Changes	Summary
SB 6617	Adding new sections to chapter 36.70A RCW.	<i>By July 1, 2021, any city within a county planning under the GMA must adopt or amend ordinances, regulations, or other official controls that do not require the provision of off-street parking for ADUs within 0.25 mile of a major transit stop. However, such a city may require the provision of off-street parking for an ADU located within 0.25 mile of a major transit stop if the city determines the ADU is in an area with a lack of access to street parking capacity, physical space impediments, or other reasons to support that on-street parking is infeasible for the ADU.</i>
HB 1923	Amending RCW 36.70A.030, 43.21C.420, and 36.70A.490; adding new sections to chapter 36.70A RCW; adding new sections to chapter 43.21C RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.22RCW; providing an effective date; and declaring an emergency.	<p><i>A bill targeted at increasing urban residential building capacity through multiple initiatives, including the requirement that a city may not prohibit permanent supportive housing in areas where multifamily housing is permitted. Additionally, the bill encourages cities planning fully under the GMA to take two or more of a list of selected actions to increase residential building capacity. Encouragement comes in the form of exemption from judicial appeal under SEPA and the GMA, as well as grants of up to \$100,000 to support planning and outreach efforts. This encouragement was originally mandatory under the original bill as proposed.</i></p> <p><i>Examples of suggested actions include:</i></p> <ul style="list-style-type: none"> <i>- authorize cluster zoning or lot size averaging in all zoning districts that permit single-family residences;</i> <i>- authorize a duplex on each corner lot within all zoning districts that permit single-family residences;</i> <i>- authorize accessory dwelling units on all lots</i>

		<p><i>located in zoning districts that permit single-family residences, subject to certain restrictions;</i></p> <p><i>- adopt increases in categorical exemptions pursuant to the infill development provisions of SEPA for single-family and multifamily development.</i></p>
SB 5383	<p>Amending RCW 58.17.040, 35.21.684, 43.22.450, 19.27.035, and 35.21.278; adding a new section to chapter 35.21 RCW; and creating a new section.</p>	<p><i>Authorizing cities to permit tiny houses as a form of accessory dwelling unit (ADU), and “tiny houses with wheels to be collected together as tiny house villages”. Exempts tiny homes from subdivision requirements, and mandates that tiny homes and recreational vehicles may not be banned in manufactured/mobile home communities. Requires adoption of building code standards specific for tiny homes by December 31, 2019.</i></p>

LOOKING FORWARD: 2021 & BEYOND

While the 2019-2020 legislation may have overlooked counties, that omission is being rectified in the current 2021 legislative session. In fact, certain legislation such as both [HB 1298](#) and [SB 5221](#) are directly targeted at middle housing—in this case, ADUs—outside of urban growth areas. Emphasis on middle housing continues this session, including duplexes, triplexes, townhomes, and ADUs. Washington may see more encouragement for middle housing, with the notable introduction of [SB 5269](#), proposing to allow counties and cities to increase tax revenue if they include middle housing types in single-family areas within UGAs. Additional bills address emergency shelters, low-income housing, occupancy standards, and tax incentives/funding options to encourage cities to further densify. Furthermore, while not directly mentioned within the housing legislative proposals, racial equity is a clear theme in 2021. For example, [SB 5405](#) instructs the joint legislative audit and review committee to perform racial equity analyses in its performance audits, sunset reviews, and other audits/reports to look at racial disproportionalities and disparate impacts.

While it is uncertain which upcoming proposals will be passed, and how they will be altered before approval, several of the most impactful are detailed below, divided into the following organizational categories: Upcoming Bills Regarding Planning under the GMA, Upcoming Bills Regarding Middle Housing, Upcoming Bills Regarding Tax Incentives/Financing, and Other. Given the increasing severity of the housing crisis within the State, and the possibility of legislative action, the recommendations contained within these bills may serve as useful inspiration for Clark County's future implementation priorities to be identified through this Housing Options project.



Upcoming Bills Regarding Planning under the GMA

[HB 1241](#)

Amends RCW 90.58.080 and 90.58.080; reenacts and amends RCW 236.70A.130

Planning under the GMA.

- *Increases review and revision cycle for comprehensive plans and Shoreline Master Plans from eight to 10 years.*
- *Requires cities and counties with more than 7,500 population to produce an annual work program for implementing the comprehensive plan.*
- *Requires counties and cities to submit an implementation progress report with certain required information to the Department of Commerce five years after reviewing and revising a comprehensive plan.*

[HB 1232](#)

Amend RCW 36.70A.210; and reenacts and amends RCW 36.70A.070

Relating to the planning for middle housing under the GMA. States that, "The housing element should link jurisdictional goals with overall county goals to ensure that the housing element goals are met. If a county or city does not plan for each housing type identified in this subsection, including single-family residences such as single-family detached dwellings, duplexes, triplexes, and townhomes, then the applicable countywide planning policy required under RCW 36.70A.210 must provide for how the county, as a whole, and its cities will meet the existing and projected housing needs of all economic segments of the community during the planning period."

Upcoming Bills Regarding Middle Housing

[HB 1298/SB 5221](#)

Amends RCW 36.70A.697 and creates a new section.

Similar bills that exclude accessory dwelling units located outside urban growth areas from the calculation of housing density in that area if certain local development regulations regarding accessory dwelling units are imposed.

[HB 1337](#) (DEAD)

Amends RCW 136.70A.696 and 43.21C.495; adds new sections to chapter 36.70A RCW; adding new sections to chapter 82.14 RCW; creating a new section; and repealing RCW 35.63.210, 35A.63.230, 36.70A.400, 36.70.677, and 443.63A.215

Provides that cities and counties that adopt specified policies regarding accessory dwelling units may qualify for a distribution from the accessory dwelling unit incentive account.

- *Distributions from the accessory dwelling unit incentive account are based on the number of qualifying new accessory dwelling units constructed after the regulations are adopted.*
- *Provides for the transfer from the General Fund of \$1,000,000 each fiscal year to be used for distributions, with any remainder to be returned to the General Fund at the end of the fiscal year.*

[SB 5024](#)

Amending RCW 64.55.010, 64.90.645, and 64.04.005.

An act relating to reducing barriers to condominium construction. Exempts condominiums with ten or fewer units and no more than two stories from the requirement to submit building enclosure design documents and obtain periodic inspections throughout the course of construction. Additionally, allows deposit funds for the purchase of a unit in a common interest community to be used for construction costs if the declarant maintains a surety bond in favor of the purchaser in the amount of the deposit.

[SB 5269](#)

Amending RCW 84.55.010 and adding a new section chapter 36.70A.

- *Provides incentives for all Growth Management Act planning jurisdictions to allow for multifamily housing units in areas zoned for single-family residential use within urban growth areas (UGAs).*
- *Provides incentives for certain parking units per lot size or dwelling unit within a UGA.*
- *Includes the general value increase of property conversions to multifamily housing units in the calculation of the property tax revenue limit.*

[SB 5235](#)

Amending RCW 36.70A.696, 36.70A.697, and 36.70A.698; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW.

Prohibits counties planning under the Growth Management Act and cities within such counties from prohibiting primarily renter occupied housing units on the same lot as an accessory dwelling unit, with exceptions. Additionally, prohibits local governments from limiting the number of unrelated persons occupying a home, with exceptions.

Upcoming Bills Regarding Tax Incentives/Financing

[HB 1157](#)

Amending RCW 82.45.060 and adding a new section to chapter 36.70A.

Authorizes counties and cities to establish a real estate excise tax (REET) density incentive zone within urban growth area. An incentive zone may only be located within a UGA and must allow dwelling units to be in addition to the baseline density allowed under existing zoning. Upon establishing an incentive zone, the local government receives a portion of the state REET imposed for sales of qualified residential dwelling units within the incentive zone. Allowed uses of REET money include planning to implement moderate, low, very low, and extremely low-income housing and creating affordable housing.

[SB 5390](#)

Amending RCW 82.45.060; reenacting and amending RCW 336.70A.070 and adding a new section to chapter 36.70A.

Amends the elements of a comprehensive plan to ensure consideration of multifamily housing units and housing targets. Additionally, creates real estate excise tax density incentive zones within urban growth areas in buildable lands areas.

Other

[SB 5405](#)

Amending RCW 44.28.005; and adding a new section to chapter 44.28.

Instructing the joint legislative audit and review committee to perform racial equity analyses.

[HB 1220](#)

Amend RCW 236.70A.020 and 36.70A.030; reenacting and amending RCW 36.70A.070; adding a new section to chapter 35A.21 RCW; and adding a new section to chapter 35.21.

Supporting emergency shelters and housing through local planning and development regulations.

Updates the housing goals of the Growth Management Act to include planning for and accommodating affordable housing.

- *Requires jurisdictions to address moderate, low, very low, and extremely low-income housing in the housing element of the comprehensive plan.*
- *Requires jurisdictions to address racially disparate impacts and displacement in the housing element of the comprehensive plan.*